U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: SRC 02 126 53931 Office: TEXAS SERVICE CENTER Date: OCT 27 2003

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a horse farm. It seeks classification of the beneficiary as an international equine marketing and management trainee. The director determined that the petitioner had not established that the beneficiary could not receive similar training in his home country. Additionally, the director found that the training program is on behalf of a beneficiary who already possesses substantial training and expertise; as such, the training program may not be approved, pursuant to 8 C.F.R. § 214.2(h)(7)(iii)(C).

On appeal, counsel submits a brief stating that the director erred in her decision, and that training is not available in the beneficiary's home country. Counsel submits additional proof of this assertion. Counsel also states that the beneficiary does not have substantial training and expertise in the area of the proposed training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

> (ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: a training program schedule showing a two-year program covering each major area of farm operation; articles and information about the petitioner's owner's career and reputation; the petitioner's promotional material; a letter from the second largest stud farm in Ireland stating that similar training is unavailable in that country; photographs of the petitioner's facilities; financial and legal documents of the petitioner; biographies of four of the trainers; and a notice of a prior H-3 approval to support the petitioner's claim that it has a well-established training program.

In her denial, the director determined that the petitioner did not show that the beneficiary could not receive the same type of training in his home country. The director quoted the petitioner's response to a question on the request for additional evidence to demonstrate that the training is not available abroad. The director quoted the petitioner as stating:

> The training provided in the United States by people who have been at the center of the thoroughbred industry for 30 years cannot be matched anywhere else in the world. The U.S. is the world headquarters of the thoroughbred horse industry. More than 60% of the world's greatest racehorses are bred and trained here. All of the most skilled horse people are here. The best veterinary care is given here. The best and most expensive farms are here. In the U.S. horses are trained on various tracks, including dirt. Nothing in Mexico [sic] compares to the quality of training and experience that can be gained in the U.S. All of the resources and modern sciences available in the U.S. are not available in Mexico [sic].

> Pin Oak Stud has experience and skill unmatched anywhere in the country of Mexico [sic].

The director then states that the petitioner did not establish that this training in not available in the beneficiary's own country. On appeal, counsel states that the beneficiary is from Ireland, not Mexico. In addition, counsel submits a letter from Joe Osborne, Managing Director of Kildangan Stud, the second largest stud in Ireland. Mr. Osborne cited a number of reasons why the proposed training cannot be received in Ireland, including the differences in training tracks, medications, management style, bloodlines, blacksmithing, and repair of limb deformities in foals. The petitioner has established that the training is not available in the beneficiary's home country. The comments of the director on this matter are withdrawn.

The director also found that the beneficiary possessed substantial training and expertise in the proposed field of training because the petitioner had stated:

> [The beneficiary] is an ideal candidate . . . . He has a strong background in the horse industry, with exemplary career records in the Irish thoroughbred industry. With his previous work experience and training, he has a solid foundation in the essentials of thoroughbred horse care and management, and holds the potential to direct and coordinate any racing, breeding, or purchasing operation for our organization in the future.

There is no indication in the record that the beneficiary has received training or has any expertise in the topic areas that will be covered in the proposed training. Additionally, on appeal, counsel submits a statement from the petitioner's manager stating that it is necessary for a trainee to have some expertise and experience coming in to the program, as the trainees are working with horses worth millions of dollars. The director's comments on this ground for denial are withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.